

1989

First Natinal Bank of Boston v. County Board of Equalization of Salt Lake County, State of Utah; Utah State Tax Commision : Brief of Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Bank of Boston v. Utah State Tax Commision*, No. 890278.00 (Utah Supreme Court, 1989).
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BRIEF

IN THE SUPREME COURT

OF THE STATE OF UTAH

FIRST NATIONAL BANK OF
BOSTON,

Petitioner,

-vs-

COUNTY BOARD OF EQUALIZATION
OF SALT LAKE COUNTY, STATE
OF UTAH; UTAH STATE TAX
COMMISSION.

Respondents.

:
:
: BRIEF OF RESPONDENT COUNTY
: BOARD OF EQUALIZATION OF
: SALT LAKE COUNTY.
:
:

: Docket No. 890278
:
:
:

: Priority 14a
:

APPEAL FROM THE UTAH STATE TAX COMMISSION

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FILED
NOV27 1989

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IN THE SUPREME COURT
OF THE STATE OF UTAH

FIRST NATIONAL BANK OF BOSTON,	:	
	:	BRIEF OF RESPONDENT COUNTY
Petitioner,	:	BOARD OF EQUALIZATION OF
	:	SALT LAKE COUNTY.
	:	
-vs-	:	
	:	
COUNTY BOARD OF EQUALIZATION	:	Docket No. 890278
OF SALT LAKE COUNTY, STATE	:	
OF UTAH; UTAH STATE TAX	:	
COMMISSION.	:	
	:	Priority 14a
Respondents.	:	

APPEAL FROM THE UTAH STATE TAX COMMISSION

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JURISDICTION

This is an appeal by First National Bank of Boston, from an order and decision of the Utah State Tax Commission determining the taxable value of appellant's property located within Salt Lake County, State of Utah. The Utah Supreme Court has jurisdiction to hear this appeal pursuant to Utah Code Annotated, Section 78-2-2(3)(e)(ii).

ISSUE PRESENTED FOR REVIEW

The issue presented for review is whether or not the Utah State Tax Commission, at a hearing concerning the valuation of property, can make its own valuation determination based upon the evidence presented, or, must the Utah State Tax Commission select from one of the two alternatives presented by the parties litigant before the Commission.

CONSTITUTIONAL PROVISIONS AND STATUTES

Article XIII, Section 11 of the Constitution of the State of Utah; see Appendix I.

Utah Code Annotated Section 59-2-210(7)(23)(25); see Appendix I.

Utah Code Annotated Section 59-2-1006(3); see Appendix I.

Utah Code Annotated Section 63-46b-16(4)(g); see Appendix I.

STATEMENT OF THE CASE

The property that is the subject matter of this appeal

is located at 4516 South 700 East, Salt Lake City, Utah, and is owned by the appellant. During tax year 1987, the Salt Lake County Assessor assessed said property for value at \$5,176,440. The owner appealed that valuation to the Salt Lake County Board of Equalization, which County Board adjusted the valuation of the subject property to \$4,580,850. Thereafter, the owner appealed the decision of the County Board of Equalization to the Utah State Tax Commission. After a formal hearing on the value of the subject property for tax year 1987, the Tax Commission entered its Findings of Fact, Conclusions of Law and Final Decision, thereby determining that the fair market value of the subject property was 4.2 million dollars.

At the hearing, the owner and the County submitted valuation evidence for consideration by the Commission. The Commission, after having considered all the evidence presented, made a determination of the value of the subject property, which determination did not adopt in toto, either the valuation asserted by the County Board of Equalization, nor the valuation asserted by the petitioner, but rather determined that the subject property was worth 4.2 million dollars, based upon the evidence presented.

Petitioner filed a petition for writ of review to the Utah Supreme Court seeking a modification of the State Tax Commission ruling based upon an assertion that the value found

by the Utah State Tax Commission was not supported by the evidence because the Utah State Tax Commission derived a value based upon an expense ratio that was not asserted either by the County or by the appellant. Rather, said expense ratio was ascertained by the Utah State Tax Commission after reviewing the evidence presented to it and relying upon those three properties that the Commission determined to be the most comparable for purposes of deriving its expense ratio.

STATEMENT OF FACTS

The tax in question is the property tax levied upon taxable property for tax year 1987.

The subject property which generated this appeal is located within Salt Lake County, State of Utah.

Petitioner asserted that the property had a market value of 3.6 million dollars, based upon an annualized property operations data sheet relied upon by the Petitioner to calculate the market value.

The respondent, County Board of Equalization, submitted a full narrative appraisal identifying the three approaches to value, i.e., cost, market, and income approach, and asserted that the income approach was the most applicable and determined the fair market value of the subject property to be 4.7 million dollars.

The Utah State Tax Commission, after the hearing, made the following factual determinations as they relate to the income approach to value:

A. Rental income was \$14 per square foot less an adjustment for free rent, or \$11.64 per square foot.

B. The area size of the building was 58,252 square feet.

C. Stabilized vacancy rate was 10%.

D. Expense ratio was 25%.

E. The capitalization rate was 10.9%.

With a resulting value of the subject property for taxation purposes of 4.2 million dollars. Additional facts set forth by the Utah State Tax Commission in its Order following petitions for reconsideration filed by the Petitioner and the Respondent, indicated that the expense ratio of 25% was based upon a review of the comparable properties submitted by each party as evidence of market value and in particular, the three properties determined by the Utah State Tax Commission to be most comparable, which had expenses of \$2.71, 2.76, and \$2.81 per square foot, and which showed an expense ratio slightly under the Utah State Tax Commission's finding of a 25% ratio.

SUMMARY OF ARGUMENT

Respondent asserts that there was substantial evidence before the Utah State Tax Commission from which the Commission could conclude the fair market value of the subject

property. Included within said substantial evidence were several comparable properties showing various expense ratios. The Utah State Tax Commission, in selecting those expense ratios that it determined to be most applicable to the subject property, was free to arrive at its own valuation conclusion concerning the value of the subject property, and was not bound to select either the Petitioner's assertion concerning the expense ratio, or the Respondent's assertion concerning the expense ratio, but could, based upon the evidence, make its own determination as to the appropriate, allowable expenses in ascertaining the value of the subject property.

POINT I

THE UTAH STATE TAX COMMISSION IS NOT REQUIRED TO DETERMINE A VALUE THAT REFLECTS EITHER PARTY'S ASCERTION.

The Utah State Tax Commission has ample authority in exercising its quasi-judicial capacity to determine the fair market value of the subject property, and in making that determination, is not bound to choose either the Petitioner's assertion, or the Respondent's assertion, but can arrive at its own conclusion of value based upon the evidence presented.

Article XIII, Section 11 of the Constitution of the State of Utah creates the Utah State Tax Commission. Section 11, in part, provides that:

"...THE State Tax Commission shall administer and supervise the Tax Laws of the State. It shall assess mines and public utilities and adjust and equalize the valuation and assessment

of property among the several counties. It shall have such other powers of original assessment as the Legislature may provide. Under such regulations, in such cases, and within such limitations as the Legislature may prescribe, it shall review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment valuation of property within the counties...." (Emphasis supplied.)

Said Constitutional provision further provides:

"In each county of this State, there shall be a County Board of Equalization consisting of the Board of County Commissioners of said county. The County Boards of Equalization shall adjust and equalize the valuation and assessment of the real and personal property within their respective counties, subject to such regulation and control by the State Tax Commission as may be prescribed by law. The State Tax Commission, and the County Boards of Equalization shall each have such other powers as may be prescribed by the Legislature.

In implementing the constitutional authority given to the Utah State Tax Commission, the Legislature has enacted Utah Code Annotated Section 59-1-210, Utah Code Annotated 1953, as amended, which provides in part as follows:

"The powers and duties of the Commission are as follows: Subparagraph (7), To exercise supervision over Assessors and County Boards of Equalization, and over other county officers in the performance of their duties relating to the assessment of property and collection of taxes, so that all assessments of property are just and equal, according to fair market value, and that the tax burden is distributed without favor or discrimination;

And, in subparagraph (23); it has the power and duty to:

"correct any error in any assessment made by it at any time before the tax is due and report the correction to the County Auditor who shall enter

the corrected assessment upon the assessment rolls;"

And, in subparagraph (25); it has the power and duty to:

"Perform any further duties imposed by law, and exercise all powers necessary in the performance of its duties.

Utah Code Annotated, Section 59-2-1006, 1953, as amended, deals with appeals from the County Board of Equalization to the Utah State Tax Commission. That statute in part provides:

"(1) Any person dissatisfied with the decision of the County Board of Equalization concerning the assessment of any property or the determination of any exemption in which the person has an interest, may appeal that decision to the Commission by filing a notice of appeal specifying the grounds for the appeal with the County Auditor within thirty days after the final action of the County Board."

And, in subparagraph (3) of said statute, it is provided:

"In reviewing the County Board's decision, the Commission may: (a) Admit additional evidence; (b) issue orders that it considers to be just and proper; and, (c) make any correction or change in the assessment or order of the County Board of Equalization." (Emphasis supplied.)

From the foregoing constitutional and statutory authority, it seems absolutely clear that the Utah State Tax Commission, as a quasi-judicial body, has the authority to make its own determination as to the fair market value of a property that is before it on appeal from the County Board of Equalization. In doing so, it has the authority to consider additional evidence on appeal and it also has the same general authority as

the County Board of Equalization to make a final valuation determination based upon the evidence presented to it. In the instant case, each party to the appeal presented its evidence concerning value. Within that evidence were references to various properties deemed by each party to be comparable to the subject property. The Commission, in exercising its quasi-judicial function, had the power and the authority to make its own determination based upon that evidence, concerning which properties it determined to be most comparable for purposes of determining the income as well as for determining the expenses. And, unless the Petitioner can show that the action of the Commission in making such a determination constituted substantial error, was arbitrary and capricious, and therefore not supportable in law or in fact, or can show an intentional and systematic overvaluation, review by this Court of the Commission's valuation determination is inappropriate. See Bliss Hotel Company v. Thompson, 378 P.2d 319 (Okla. 1962). See also Utah Power and Light v. Utah State Tax Commission, 590 P.2d 322 (Utah 1979). Some state courts go so far as to require fraud or the adoption of fundamentally incorrect principles of valuation as a grounds for setting aside an assessment. See May Stores Shopping Centers, Inc. v. Shoemaker, 376 P.2d 679 (Colo. 1962); CF., 20th Century Investment Co., v. City of Juneau, 359 P.2d 782 (Alaska 1961).

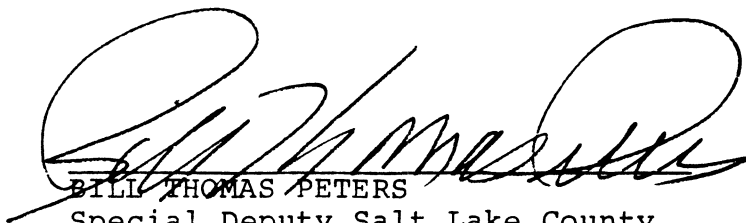
Petitioner asserts that the value determination made by the Utah State Tax Commission, results from a factual error which brings this case within the description of Utah Code Annotated, Section 63-46B-16(4)(g), which allows an appellate court to grant relief only if it determines from the record of the agency that prejudice has occurred resulting from agency action based upon a determination of fact which is not supported by substantial evidence when viewed in light of the whole record before the Court. However, it is clear from this case that the petitioner's assertion is not well founded. A review of the entire record of these proceedings and in particular the appraisal submitted by Salt Lake County, will clearly demonstrate to this Court that there was a factual basis upon which the Utah State Tax Commission could, and did, make its determination. The fact that the Commission did not adopt the expense ratio asserted by the Petitioner, or for that matter asserted by the County, but rather chose to determine the expense ratio based upon the comparable properties that were submitted as part of the evidence in the valuation hearing, does not compel the conclusion that there was not sufficient evidence or substantial evidence to support the Commission's decision. Indeed, if the Court were to adopt the principle urged by the Petitioner, i.e., that the Utah State Tax Commission is required to select propositions postulated either by the Petitioner or by the Respondent, the results indeed could be contrary to its

constitutional and statutory mandates. For example, if both Petitioner and Respondent postulated a value that was clearly not consistent with the fair market value of the property based upon other evidence presented to the Commission, is the Commission required to pick one or the other of two ridiculous proposals? Clearly not. Its goal is to adjust and equalize the values so that "the tax burden is distributed without favor or discrimination;" 59-1-210(7). Clearly it has done so in this case.

CONCLUSION

For the above and foregoing reasons it is respectfully submitted that the decision of the Utah State Tax Commission resulting from a formal hearing before the Commission, resulted from evidence that was presented to the Commission, and the mere fact that the Commission chose not to select either Petitioner or Respondent's position concerning allowable expenses in arriving at income to be capitalized for purposes of determining the value of the subject property, does not constitute a basis upon which this Court can substitute its judgment for that of the Utah State Tax Commission and set aside its valuation determination.

RESPECTFULLY SUBMITTED this 27th day of November,
1989.


BILL THOMAS PETERS
Special Deputy Salt Lake County
Attorney

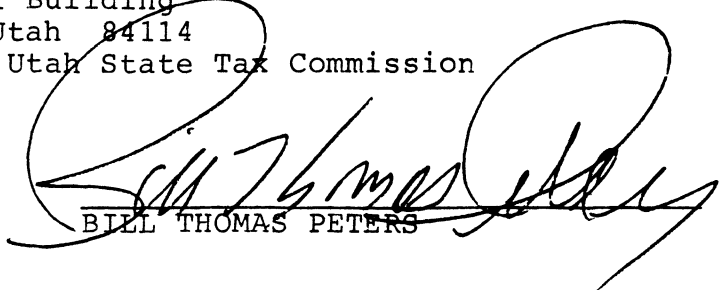
CERTIFICATE OF SERVICE

I do hereby certify that I caused to be mailed, postage prepaid, four true and correct copies of the foregoing brief of respondent to the following this 27th day of November, 1989.

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And, hand delivered four copies of said brief to:

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BILL THOMAS PETERS

APPENDIX I

preservation of the peace, or the suppression of domestic troubles without authority of law. 1896

Sec. 17. [Repealed.] 1983

Sec. 18. [Liability of stockholders of banks.]

The legislature may provide by law that the stockholders in every corporation and joint stock association organized for banking purposes, or the holders of any one or more of the classes of stock issued by any such corporation in addition to the amount of capital stock subscribed and fully paid by them shall be individually responsible for an additional amount equal to not exceeding the amount of their stock in such corporation, or the amount of their stock of any particular class in such corporation, for all its debts and liabilities of every kind. 1941

Sec. 19. [Blacklisting forbidden.]

Every person in this State shall be free to obtain employment whenever possible, and any person, corporation, or agent, servant or employee thereof, maliciously interfering or hindering in any way, any person from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a crime. The Legislature shall provide by law for the enforcement of this section. 1896

Sec. 20. [Trusts and combinations prohibited.]

Any combination by individuals, corporations, or associations, having for its object or effect the controlling of the price of any products of the soil, or of any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited, and hereby declared unlawful, and against public policy. The Legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, it may declare a forfeiture of their franchise. 1896

ARTICLE XIII

REVENUE AND TAXATION

Section

1. [Fiscal year.]
2. [Tangible property to be taxed — Value ascertained — Exemption of state and municipal property — Exemption of tangible personal property held for sale or processing — Exemption of property used for irrigating land — Exemption of property used for electrical power — Remittance or abatement of taxes of poor — Exemption of residential and household property — Disabled veterans' exemption — Intangible property — Legislature to provide annual tax for state.]
3. [Assessment and taxation of tangible property — Livestock — Land used for agricultural purposes.]
4. [Mines and claims to be assessed — Basis and multiple — What to be assessed as tangible property.]
5. [Local authorities to levy local taxes — Sharing tax and revenues by political subdivisions.]
6. [Annual statement to be published.]
7. [Repealed.]
8. [Officer not to make profit out of public moneys.]

Section

9. [State expenditure to be kept within revenues.]
10. [All property taxable where situated.]
11. [Creation of State Tax Commission — Membership — Governor to appoint — Terms — Duties — County boards — Duties.]
12. [Stamp, income, occupation, license or franchise tax permissible — Reference to United States laws in imposition of income taxes — Income or intangible property taxes allocated to public school system.]
13. [Revenue from highway user and motor fuel taxes to be used for highway purposes.]
14. [Tangible personal property tax exemption.]

Section 1. [Fiscal year.]

The fiscal year shall begin on the first day of January, unless changed by the Legislature. 1896

Sec. 2. [Tangible property to be taxed — Value ascertained — Exemption of state and municipal property — Exemption of tangible personal property held for sale or processing — Exemption of property used for irrigating land — Exemption of property used for electrical power — Remittance or abatement of taxes of poor — Exemption of residential and household property — Disabled veterans' exemption — Intangible property — Legislature to provide annual tax for state.]

(1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

(2) The following are property tax exemptions:

(a) The property of the state, school districts, and public libraries;

(b) The property of counties, cities, towns, special districts, and all other political subdivisions of the state, except that to the extent and in the manner provided by the Legislature the property of a county, city, town, special district or other political subdivision of the state located outside of its geographic boundaries as defined by law may be subject to the ad valorem property tax;

(c) Property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;

(d) Places of burial not held or used for private or corporate benefit; and

(e) Farm equipment and farm machinery as defined by statute. This exemption shall be implemented over a period of time as provided by statute.

(3) Tangible personal property present in Utah on January 1, m., which is held for sale or processing and which is shipped to final destination outside this state within twelve months may be deemed by law to have acquired no situs in Utah for purposes of ad valorem property taxation and may be exempted by law from such taxation, whether manufactured, processed or produced or otherwise originating within or without the state.

(4) Tangible personal property present in Utah on January 1, m., held for sale in the ordinary course of business and which constitutes the inventory of any retailer, or wholesaler or manufacturer or farmer, or

Sec. 11. [Creation of State Tax Commission — Membership — Governor to appoint — Terms — Duties — County boards — Duties.]

There shall be a State Tax Commission consisting of four members, not more than two of whom shall belong to the same political party. The members of the Commission shall be appointed by the Governor, by and with the consent of the Senate, for such terms of office as may be provided by law. The State Tax Commission shall administer and supervise the tax laws of the State. It shall assess mines and public utilities and adjust and equalize the valuation and assessment of property among the several counties. It shall have such other powers of original assessment as the Legislature may provide. Under such regulations in such cases and within such limitations as the Legislature may prescribe it shall review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment and valuation of property within the counties. The duties imposed upon the State Board of Equalization by the Constitution and Laws of this State shall be performed by the State Tax Commission.

In each county of this State there shall be a County Board of Equalization consisting of the Board of County Commissioners of said county. The County Boards of Equalization shall adjust and equalize the valuation and assessment of the real and personal property within their respective counties subject to such regulation and control by the State Tax Commission as may be prescribed by law. The State Tax Commission and the County Boards of Equalization shall each have such other powers as may be prescribed by the Legislature. 1959

Sec. 12. [Stamp, income, occupation, license or franchise tax permissible — Reference to United States laws in imposition of income taxes — Income or intangible property taxes allocated to public school system.]

(1) Nothing in this Constitution shall be construed to prevent the Legislature from providing a stamp tax, or a tax based on income, occupation licenses, franchises, or other tax provided by law. The Legislature may provide for deductions, exemptions, or offsets on any tax based upon income, occupation licenses, franchises, or other tax as provided by law pursuant to this section.

(2) Notwithstanding any provision of this Constitution, the Legislature, in any law imposing income taxes, may define the amount on which the taxes are imposed or measured by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time and may prescribe exemptions or modifications to any such provision.

(3) All revenue received from taxes on income or from taxes on intangible property shall be allocated to the support of the public school system as defined in Article X, Sec. 2 of this Constitution. 1983

Sec. 13. [Revenue from highway user and motor fuel taxes to be used for highway purposes.]

The proceeds from the imposition of any license tax, registration fee, driver education tax or other charge related to the operation of any motor vehicle upon any public highway in this state and the proceeds from the imposition of any excise tax on gasoline or other liquid motor fuel used for propelling

such vehicles, except for statutory refunds and adjustments allowed thereunder and for costs of collection and administration, shall be used exclusively for highway purposes as follows:

(1) The construction, improvement, repair and maintenance of city streets, county roads, and state highways, including but not restricted to payment for property taken for or damaged by rights of way, and for administrative costs necessarily incurred for said purposes.

(2) The administration of a driver education program.

(3) The enforcement of state motor vehicle and traffic laws.

(4) Tourists and publicity expense in any single biennium not in excess of the lesser of the following: (a) 5 per cent of the total biennial revenues from motor fuel taxes, or (b) an amount equal to the 1959-1961 biennium. 1962

Sec. 14. [Tangible personal property tax exemption.]

Aircraft, watercraft, motor vehicles, and other tangible personal property, not otherwise exempt under the laws of the United States or under this Constitution, may be exempted from taxation as property by the Legislature. In the exercise of the discretion granted under this section, however, the Legislature may only exempt tangible personal property that is required by law to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air. If the Legislature exempts tangible personal property from taxation under this section, it shall provide for uniform statewide fees or uniform statewide rates of assessment or levy in lieu of the tax on such property. The value of any tangible personal property exempted from taxation, however, shall remain and be considered as part of the state tax base for the purpose of determining debt limitations as set forth in Article XIV of this constitution. The proceeds from such a tax or fee are not subject to Sec. 13 of this Article and shall be distributed to the taxing districts in which the exempted property is located in the same proportion as the revenue collected from real property tax is distributed to such districts. 1984

ARTICLE XIV

PUBLIC DEBT

Section

- 1 [Fixing the limit of the state indebtedness]
- 2 [Debts for public defense]
- 3 [Debts of counties, cities, towns, and school districts not to exceed revenue — Exception]
- 4 [Limit of indebtedness of counties, cities, towns and school districts]
- 5 [Borrowed money to be applied to authorized use]
- 6 [State not to assume county, city, town or school district debts]
- 7 [Existing indebtedness not impaired]
- 8 [Special service districts]

Section 1. [Fixing the limit of the state indebtedness.]

To meet casual deficits or failures in revenue, and for necessary expenditures for public purposes, including the erection of public buildings, and for the payment of all Territorial indebtedness assumed by the State, the State may contract debts, not exceeding in the aggregate at any one time, an amount equal to

mission These employees are subject to Chapter 19, Title 67, the State Personnel Management Act

(4) The internal audit unit shall provide the following

(a) an examination to determine the honesty and integrity of fiscal affairs, the accuracy and reliability of financial statements and reports, and the adequacy and effectiveness of financial controls to properly record and safeguard the acquisition, custody, and use of public funds,

(b) an examination to determine whether commission administrators have faithfully adhered to commission policies and legislative intent,

(c) an examination to determine whether the operations of the divisions and other units of the commission have been conducted in an efficient and effective manner

(d) an examination to determine whether the programs administered by the divisions and other units of the commission have been effective in accomplishing intended objectives, and

(e) an examination to determine whether management control and information systems are adequate and effective in assuring that commission programs are administered faithfully, efficiently, and effectively

(5) The appeals office shall receive and hear appeals to the commission, and shall conduct the hearings in compliance with formal written rules approved by the commission The commission has final review authority over the appeals

1987

59-1-207. Executive director's functions.

The commission shall prepare and implement a plan for the administration of the divisions and other offices of the commission which do not report directly to the commission The plan shall, by rule, establish the duties and responsibilities to be delegated to the executive director

1987

59-1-208. Offices.

The main office of the commission shall be located in Salt Lake City The commission may establish branch offices necessary for the convenience of the public and the efficient performance of its duties

1987

59-1-209. Official seal — Authenticated copies of records as evidence.

The commission shall adopt an official seal, and shall file an impression and description of the seal with the Division of Archives Copies of any records in the possession of the commission may be authenticated with the seal of the commission attested by the signature of the commission's administrative secretary, and when so authenticated shall be received in evidence to the same extent and with the same effect as the originals

1987

59-1-210. General powers and duties.

The powers and duties of the commission are as follows

(1) to sue and be sued in its own name,

(2) to adopt rules and policies consistent with the Constitution and laws of this state to govern the commission, executive director, division directors, and commission employees in the performance of their duties,

(3) to adopt rules and policies consistent with the Constitution and laws of the state, to govern county boards and officers in the performance of any duty relating to assessment, equalization, and collection of taxes,

(4) to prescribe the use of forms relating to the assessment of property for state or local taxation, the equalization of those assessments, the reporting of property or income for state or local taxation purposes, or for the computation of those taxes and the reporting of any information, statistics, or data required by the commission,

(5) to administer and supervise the tax laws of the state,

(6) to prepare and maintain from year to year a complete record of all lands subject to taxation in this state, and all machinery used in mining and all property or surface improvements upon or appurtenant to mines or mining claims,

(7) to exercise general supervision over assessors and county boards of equalization, and over other county officers in the performance of their duties relating to the assessment of property and collection of taxes, so that all assessments of property are just and equal, according to fair market value, and that the tax burden is distributed without favor or discrimination,

(8) to reconvene any county board of equalization which, when reconvened may only address business approved by the commission and extend the time for which any county board of equalization may sit for the equalization of assessments,

(9) to confer with, advise, and direct county treasurers, assessors, and other county officers in matters relating to the assessment and equalization of property for taxation and the collection of taxes,

(10) to provide for and hold annually at such time and place as may be convenient a district or state convention of county assessors, auditors, and other county officers to consider and discuss matters relative to taxation, uniformity of valuation, and changes in the law relative to taxation and methods of assessment, to which county assessors and other officers called to attend shall attend at county expense,

(11) to direct proceedings, actions, and prosecutions to enforce the laws relating to the penalties, liabilities, and punishments of public officers, persons, and officers or agents or corporations for failure or neglect to comply with the statutes governing the reporting, assessment, and taxation of property

(12) to cause complaints to be made in the proper court seeking removal from office of assessors, auditors, members of county boards and other assessing, taxing, or disbursing officers who are guilty of official misconduct or neglect of duty,

(13) to require county attorneys to immediately institute and prosecute actions and proceedings in respect to penalties forfeitures, removals, and punishments for violations of the laws relating to the assessment and taxation of property in their respective counties,

(14) to require any person to furnish any information required by the commission to ascertain the value and the relative burden borne by all kinds of property in the state, and to require from all state and local officers any information necessary for the proper discharge of the duties of the commission,

(15) to examine all records relating to the valuation of property of any person,

(16) to subpoena witnesses to appear and give testimony and produce records relating to any matter before the commission,

(17) to cause depositions of eyewitnesses to be taken as in civil actions at the request of the commission or any party to any matter or proceeding before the commission.

(18) to authorize any member or employee of the commission to administer oaths and affirmations in any matter or proceeding relating to the exercise of the powers and duties of the commission,

(19) to visit periodically each county of the state to investigate and direct the work and methods of local assessors and other officials in the assessment, equalization, and taxation of property, and to ascertain whether the law requiring the assessment of all property not exempt from taxation, and the collection of taxes, have been properly administered and enforced,

(20) to carefully examine all cases where evasion or violation of the laws for assessment and taxation of property is alleged to ascertain whether existing laws are defective or improperly administered,

(21) to furnish to the governor from time to time such assistance and information as the governor requires,

(22) to transmit to the governor and to each member of the Legislature recommendations as to legislation which will correct or eliminate defects in the operation of the tax laws and will equalize the burden of taxation within the state,

(23) to correct any error in any assessment made by it at any time before the tax is due and report the correction to the county auditor, who shall enter the corrected assessment upon the assessment roll,

(24) to compile and publish statistics relating to taxation in the state and prepare and submit an annual budget to the governor for inclusion in the state budget to be submitted to the Legislature,

(25) to perform any further duties imposed by law and exercise all powers necessary in the performance of its duties,

(26) to adopt a schedule of fees assessed for services provided by the commission, unless otherwise provided by statute. The fee shall be reasonable and fair, and shall reflect the cost of services provided. Each fee established in this manner shall be submitted to and approved by the Legislature as part of the commission's annual appropriations request. The commission may not charge or collect any fee proposed in this manner without approval by the Legislature, and

(27) to comply with the procedures and requirements of Chapter 46b, Title 63, in its adjudicative proceedings

1987

59-1-211. Uniform system of accounts.

(1) The commission shall establish a uniform system of accounts and when established it shall be followed by all taxing entities within the state

(2) The commission may make rules directly relating to the administration of a uniform system of accounts and shall periodically publish these rules and distribute them to all taxing entities

(3) The commission shall certify a list of all taxing entities that do not comply with the laws and rules pertaining to uniform accounts to the county attorney of the county in which the entity is located. The county attorney shall immediately notify the official or officials charged by law with complying with them. If the official or officials fail to so comply within 60

days after receipt of the notice, the county attorney shall commence proceedings in district court in mandamus to require performance

1988

PART 3

MISCELLANEOUS PROVISIONS

59-1-301. Payment under protest — Action to recover.

In all cases of levy of taxes, licenses, or other demands for public revenue which is deemed unlawful by the party whose property is taxed, or from whom the tax or license is demanded or enforced, that party may pay under protest the tax or license, or any part deemed unlawful, to the officers designated and authorized by law to collect the tax or license, and then the party so paying or a legal representative may bring an action in the tax division of the appropriate district court against the officer to whom the tax or license was paid, or against the state, county, municipality, or other taxing entity on whose behalf it was collected, to recover the tax or license or any portion of the tax or license paid under protest

1988

59-1-302. Lien for sales, use, or withholding taxes — Penalty for nonpayment — Jeopardy proceedings.

(1) If any person liable to pay the sales, use, or withholding tax neglects or refuses to pay the tax after demand, the amount, including any interest additional amount, addition to tax, or assessable penalty together with any costs that may accrue in addition, is a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to that person

(2) Unless another date is specifically fixed by law, the lien imposed for all state taxes arises at the time the assessment is made and continues until the liability for the assessed amount, or a judgment against the taxpayer arising from that liability, is satisfied or becomes unenforceable because of lapse of time

(3) Any person required to collect, truthfully account for, and pay over the sales, use, or withholding tax imposed by law who willfully fails to collect the tax, fails to truthfully account for and pay over the tax, or attempts in any manner to evade or defeat any tax or the payment of the tax, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over

(4) The penalty provided in Subsection (3) is assessed as follows

(a) If the commission determines in accordance with Subsection (3) that a person is liable for the penalty, the commission shall immediately assess the penalty and give immediate notice and demand for payment

(b) The notice of assessment of the penalty shall set forth the basis of the assessment. It shall be mailed by registered mail, postage prepaid, to the person at the person's last-known address

(5) Upon receipt of the notice of assessment, the person assessed may either

(a) pay the amount of the penalty at the place and time stated in the notice, or

(b) proceed in accordance with the review procedures of Subsections (6) and (7)

(6) Any person against whom a penalty has been assessed in accordance with Subsection (3) may con-

to equalize the assessment of all classes of property under Section 59-2-103 1988

59-2-1004. Appeal to County Board of Equalization — Real property — Hearings — Decision of board — Extensions approved by commission — Appeal to commission.

(1) Any taxpayer dissatisfied with the value of the taxpayer's real property may appeal by filing an application with the county board of equalization no later than 30 days following the mailing of either the combined valuation and tax notice under Section 59-2-1317 or the disclosure notice under Subsection 59-2-919(2). The contents of the application shall be prescribed by rule of the county board of equalization.

(2) The board shall meet and hold public hearings as prescribed in Section 59-2-1001. The board shall render a decision on each appeal no later than October 1. Any extension beyond October 1 shall first be approved by the commission.

(3) If any taxpayer is dissatisfied with the decision of the board, the taxpayer may file an appeal with the commission as prescribed in Section 59-2-1006 1988

59-2-1005. Procedures for appeal — Personal property — Time for appeal — Hearing — Decision — Appeal to commission.

(1) The county governing body shall include a notice of procedures for appeal of any personal property valuation with each tax notice. If personal property is subject to a fee in lieu of tax or the uniform tax under Article XIII, Sec. 14, Utah Constitution, and the fee or tax is based upon the value of the property, the basis of the value may be appealed to the commission.

(2) Any taxpayer dissatisfied with the taxable value of the taxpayer's personal property may appeal by filing an application no later than 30 days after the mailing of the tax notice.

(3) After giving reasonable notice, the board shall hear the appeal and render a written decision. The decision shall be rendered no later than 60 days after receipt of the appeal.

(4) If any taxpayer is dissatisfied with the decision of the board, the taxpayer may file an appeal with the commission as established in Section 59-2-1006 1988

59-2-1006. Appeal to commission — Duties of auditor — Decision by commission.

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment of any property or the determination of any exemption in which the person has an interest may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

(2) The auditor shall

(a) file one notice with the commission,

(b) certify and transmit to the commission

(i) the minutes of the proceedings of the county board of equalization for the matter appealed,

(ii) all documentary evidence received in that proceeding, and

(iii) a transcript of any testimony taken at that proceeding that was preserved, and

(c) if the appeal is from a hearing where an exemption was granted or denied, certify and transmit to the commission the written decision of the board of equalization as required by Section 59-2-1102.

(3) In reviewing the county board's decision the commission may

(a) admit additional evidence,

(b) issue orders that it considers to be just and proper, and

(c) make any correction or change in the assessment or order of the county board of equalization.

(4) The commission shall decide all appeals taken pursuant to this section not later than March 1 of the following year for real property and within 90 days for personal property, and shall report its decision, order, or assessment to the county auditor who shall make all changes necessary to comply with the decision, order, or assessment 1988

59-2-1007. Time for application to correct assessment — Hearings.

(1) If the owner of any property assessed by the commission, or any county with a showing of reasonable cause, objects to the assessment, either party may on or before June 1, apply to the commission for a hearing. Both the owner or the county, upon a showing of reasonable cause, shall be allowed to be a party at any hearing under this section.

(2) The commission shall set a time for hearing the objection and render a written decision no later than October 1. At the hearing the commission may increase, lower, or sustain the assessment if (a) the commission finds an error in the assessment or (b) it is necessary to equalize the assessment with other similarly assessed property 1988

59-2-1008. Investigations by commission — Assessment of escaped property — Increase or decrease of assessed valuation.

(1) Each year the commission shall conduct an investigation throughout each county of the state to determine whether all property subject to taxation is on the assessment rolls and whether the property is being assessed at fair market value. When after any investigation it is found that any property which is subject to taxation is not assessed, then the commission shall direct the county assessor, the county board of equalization, or the county auditor as it may determine to enter the assessment of the escaped property.

(2) If it is found that any property in any county is not being assessed at its fair market value, the commission shall for the purpose of equalizing the value of property in the state increase or decrease the valuation of the property in order to enforce the assessment of all property subject to taxation upon the basis of its fair market value and shall direct the county assessor, the county board of equalization, or the county auditor as it may determine to correct the value of the property in a manner prescribed by the commission.

(3) The county assessors, county boards of equalization, and county auditors shall make all increases or decreases as may be required by the commission to make the assessment of all property within the county conform to its fair market value 1988

59-2-1009. Equalization based on reports of county auditors.

Before July 7 the commission shall examine and compare the reports of the county auditors and shall equalize the assessment of the taxable property of the several counties of the state for the purpose of taxation 1988

(iii) the title and date of the final agency action to be reviewed, together with a duplicate copy, summary, or brief description of the agency action,

(iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action,

(v) a copy of the written agency order from the informal proceeding,

(vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review,

(vii) a request for relief, specifying the type and extent of relief requested,

(viii) a statement of the reasons why the petitioner is entitled to relief

(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure

(a) The district court, without a jury shall determine all questions of fact and law and any constitutional issue presented in the pleadings

(b) The Utah Rules of Evidence apply in judicial proceedings under this section 1988

b-16 Judicial review — Formal adjudicative proceedings.

As provided by statute the Supreme Court or Court of Appeals has jurisdiction to review all agency action resulting from formal adjudicative proceedings

(a) To seek judicial review of final agency action resulting from formal adjudicative proceedings the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court

The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure [Rules of the Utah Supreme Court] except that

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record,

(b) the appellate court may tax the cost of preparing transcripts and copies for the record

(i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record or

(ii) according to any other provision of law

(c) The appellate court shall grant relief only if, on basis of the agency's record it determines that a person seeking judicial review has been substantially prejudiced by any of the following

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied,

(b) the agency has acted beyond the jurisdiction conferred by any statute,

(c) the agency has not decided all of the issues requiring resolution,

(d) the agency has erroneously interpreted or applied the law,

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure,

(f) the persons taking the agency action were illegally constituted as a decision making body or were subject to disqualification,

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court,

(h) the agency action is

(i) an abuse of the discretion delegated to the agency by statute,

(ii) contrary to a rule of the agency,

(iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency, or

(iv) otherwise arbitrary or capricious

1988

63-46b-17. Judicial review — Type of relief.

(1) (a) In either the review of informal adjudicative proceedings by the district court or the review of formal adjudicative proceedings by an appellate court the court may award damages or compensation only to the extent expressly authorized by statute

(b) In granting relief the court may

(i) order agency action required by law,

(ii) order the agency to exercise its discretion as required by law,

(iii) set aside or modify agency action,

(iv) enjoin or stay the effective date of agency action or

(v) remand the matter to the agency for further proceedings

(2) Decisions on petitions for judicial review of final agency action are reviewable by a higher court, if authorized by statute 1987

63-46b-18. Judicial review — Stay and other temporary remedies pending final disposition.

(1) Unless precluded by another statute, the agency may grant a stay of its order or other temporary remedy during the pendency of judicial review, according to the agency's rules

(2) Parties shall petition the agency for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention

(3) If the agency denies a stay or denies other temporary remedies requested by a party the agency's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted

(4) If the agency has denied a stay or other temporary remedy to protect the public health, safety or welfare against a substantial threat the court may not grant a stay or other temporary remedy unless it finds that:

(a) the agency violated its own rules in denying the stay, or

(b) (i) the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter;

(ii) the party seeking judicial review will suffer irreparable injury without immediate relief;

(iii) granting relief to the party seeking review will not substantially harm other parties to the proceedings, and

78-1-3. Effect of act on election functions.

(1) Any justice or judge of a court of record, whose election to office was effective on or before July 1, 1985, shall hold the office for the remainder of the term to which he was elected. The justice or judge is subject to an unopposed retention election as provided by law at the general election immediately preceding the expiration of the respective term of office.

(2) Any justice or judge of a court of record whose appointment to office was effective on or before July 1, 1985, is subject to an unopposed retention election as provided by law at the first general election held more than three years after the date of the appointment.

(3) Any justice or judge of a court of record whose appointment to office was effective after July 1, 1985, is subject to an unopposed retention election as provided by law at the first general election held more than three years after the date of the appointment.

1988

CHAPTER 2**SUPREME COURT**

Section	
78-2-1	Number of justices — Term — Chief justice and associate chief justice — Selection and functions
78-2-1.5, 78-2-1.6	Repealed
78-2-2	Supreme Court jurisdiction
78-2-3	Repealed
78-2-4	Supreme Court — Rulemaking judges pro tempore, and practice of law
78-2-5	Repealed
78-2-6	Appellate court administrator
78-2-7	Repealed
78-2-7.5	Service of sheriff to court
78-2-8 to 78-2-14	Repealed

78-2-1. Number of justices — Term — Chief justice and associate chief justice — Selection and functions.

(1) The Supreme Court consists of five justices.

(2) A justice of the Supreme Court shall be appointed initially to serve until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of a justice of the Supreme Court is ten years and commences on the first Monday in January next following the date of election. A justice whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified.

(3) The justices of the Supreme Court shall elect a chief justice from among the members of the court by a majority vote of all justices. The term of the office of chief justice is four years. The chief justice may not serve successive terms. The chief justice may resign from the office of chief justice without resigning from the Supreme Court. The chief justice may be removed from the office of chief justice by a majority vote of all justices of the Supreme Court.

(4) If the justices are unable to elect a chief justice within 30 days of a vacancy in that office, the associate chief justice shall act as chief justice until a chief justice is elected under this section. If the associate chief justice is unable or unwilling to act as chief justice, the most senior justice shall act as chief justice until a chief justice is elected under this section.

(5) In addition to the chief justice's duties as a member of the Supreme Court, the chief justice has additional duties as provided by law.

(6) There is created the office of associate chief justice. The term of office of the associate chief justice is two years. The associate chief justice may serve in that office no more than two successive terms. The associate chief justice shall be elected by a majority vote of the members of the Supreme Court and shall be allocated duties as the chief justice determines. If the chief justice is absent or otherwise unable to serve, the associate chief justice shall serve as chief justice. The chief justice, where not inconsistent with law, may delegate responsibilities to the associate chief justice.

1988

78-2-1.5, 78-2-1.6. Repealed.

1971, 1981

78-2-2. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over

(a) a judgment of the Court of Appeals,

(b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals,

(c) discipline of lawyers,

(d) final orders of the Judicial Conduct Commission,

(e) final orders and decrees in formal adjudicative proceedings originating with

(i) the Public Service Commission,

(ii) the State Tax Commission

(iii) the Board of State Lands and Forestry

(iv) the Board of Oil, Gas, and Mining, or

(v) the state engineer,

(f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (e),

(g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution.

(h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony.

(i) appeals from the district court involving a conviction of a first degree or capital felony and

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except

(a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony,

(b) election and voting contests,

(c) reapportionment of election districts,

(d) retention or removal of public officers,

(e) general water adjudication,

(f) taxation and revenue, and

(g) those matters described in Subsection (3)(a) through (f).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Chapter 46b, Title 63, in its review of agency adjudicative proceedings. 1989

78-2-3. Repealed. 1986

78-2-4. Supreme Court — Rulemaking, judges pro tempore, and practice of law.

(1) The Supreme Court shall adopt rules of procedure and evidence for use in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the rules of procedure and evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature.

(2) Except as otherwise provided by the Utah Constitution, the Supreme Court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah.

(3) The Supreme Court shall by rule govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to the practice of law. 1986

78-2-5. Repealed. 1988

78-2-6. Appellate court administrator.

The appellate court administrator shall appoint clerks and support staff as necessary for the operation of the Supreme Court and the Court of Appeals. The duties of the clerks and support staff shall be established by the appellate court administrator, and powers established by rule of the Supreme Court. 1986

78-2-7. Repealed. 1986

78-2-7.5. Service of sheriff to court.

The court may at any time require the attendance and services of any sheriff in the state. 1988

78-2-8 to 78-2-14. Repealed. 1986, 1988

CHAPTER 2a

COURT OF APPEALS

Section

78-2a-1. Creation — Seal.

78-2a-2. Number of judges — Terms — Functions — Filing fees.

78-2a-3. Court of Appeals jurisdiction.

78-2a-4. Review of actions by Supreme Court.

78-2a-5. Location of Court of Appeals.

78-2a-1. Creation — Seal.

There is created a court known as the Court of Appeals. The Court of Appeals is a court of record and shall have a seal. 1986

78-2a-2. Number of judges — Terms — Functions — Filing fees.

(1) The Court of Appeals consists of seven judges. The term of appointment to office as a judge of the Court of Appeals is until the first general election held more than three years after the effective date of

the appointment. Thereafter, the term of office of a judge of the Court of Appeals is six years and commences on the first Monday in January, next following the date of election. A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified. The presiding judge of the Court of Appeals shall receive as additional compensation \$1,000 per annum or fraction thereof for the period served.

(2) The Court of Appeals shall sit and render judgment in panels of three judges. Assignment to panels shall be by random rotation of all judges of the Court of Appeals. The Court of Appeals by rule shall provide for the selection of a chair for each panel. The Court of Appeals may not sit en banc.

(3) The judges of the Court of Appeals shall elect a presiding judge from among the members of the court by majority vote of all judges. The term of office of the presiding judge is two years and until a successor is elected. A presiding judge of the Court of Appeals may serve in that office no more than two successive terms. The Court of Appeals may by rule provide for an acting presiding judge to serve in the absence or incapacity of the presiding judge.

(4) The presiding judge may be removed from the office of presiding judge by majority vote of all judges of the Court of Appeals. In addition to the duties of a judge of the Court of Appeals, the presiding judge shall:

(a) administer the rotation and scheduling of panels;

(b) act as liaison with the Supreme Court;

(c) call and preside over the meetings of the Court of Appeals; and

(d) carry out duties prescribed by the Supreme Court and the Judicial Council.

(5) Filing fees for the Court of Appeals are the same as for the Supreme Court. 1988

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

(a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, Board of State Lands, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of adjudicative proceedings of agencies of political subdivisions of the state or other local agencies

(c) appeals from the juvenile courts;

(d) appeals from the circuit courts, except those from the small claims department of a circuit court;

(e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(f) appeals from district court in criminal cases, except those involving a conviction of a first degree or capital felony;

(g) appeals from orders on petitions for extraordinary writs involving a criminal conviction, except those involving a first degree or capital felony;